

**The Office of the Chief Counsel Has Made
Significant Progress in Making Its Advice
Documents Available to the Public**

October 2001

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This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

October 12, 2001

MEMORANDUM FOR CHIEF COUNSEL

A handwritten signature in black ink, reading "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The Office of the Chief Counsel Has Made
Significant Progress in Making Its Advice Documents Available to
the Public

This report presents the results of our review of the Office of the Chief Counsel's compliance with requirements for making Chief Counsel Advice (CCA) documents available to the public. In summary, we found that Counsel's procedures were effective in ensuring that almost 95 percent of the CCA documents prepared in Fiscal Year 2000 were released for public inspection. However, the process for providing public access could be improved.

We recommended that Counsel revise its procedures to require managers to ensure that CCA documents have been identified for public release when they approve the document for issuance and also initiate a periodic review focusing on specific case closures. Counsel management agreed with these recommendations and is implementing corrective actions.

We also recommended that Counsel develop and implement a convenient method for the public to research and retrieve CCA documents issued in 1998 and prior years. Counsel placed paper copies of these documents in the Internal Revenue Service (IRS) headquarters public reading room in no searchable order and without an index. At this time, Counsel does not agree with the recommendation. Counsel will make that determination after it reviews the results of the IRS study concerning the delivery of the agency's public reading room services. We believe that if the IRS study recommends not maintaining historic documents electronically, Counsel should pursue options of contracting with tax publishers to allow the public access to these documents.

Management's comments have been incorporated into the report where appropriate, and the full text of their comments is included as an appendix.

Copies of this report are being sent to the IRS managers who are affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions, or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

**The Office of the Chief Counsel Has Made Significant Progress in Making Its
Advice Documents Available to the Public**

Table of Contents

Executive Summary.....	Page i
Objective and Scope.....	Page 1
Background	Page 1
Results	Page 2
Counsel Is On Track to Timely Release the Remaining Historical Chief Counsel Advice Documents	Page 4
Counsel Can Enhance Its Procedures to Ensure That All Chief Counsel Advice Documents are Identified for Timely Release to the Public.....	Page 5
The Public Should Be Provided a Convenient Way to Research and Retrieve Historical Chief Counsel Advice Documents.....	Page 7
Conclusion.....	Page 10
Appendix I – Detailed Objective, Scope, and Methodology	Page 11
Appendix II – Major Contributors to This Report.....	Page 13
Appendix III – Report Distribution List.....	Page 14
Appendix IV – Outcome Measures.....	Page 15
Appendix V – Management’s Response to the Draft Report	Page 16

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

Executive Summary

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ expanded the requirements for the IRS to make legal advice documents available to the public. The RRA 98 amended Internal Revenue Code (I.R.C.) § 6110² by expanding public access to tax advice written by the IRS headquarters Office of the Chief Counsel to IRS field employees. The IRS was required to release Chief Counsel Advice (CCA) documents as they are issued and to release historic CCA documents, issued between 1986 and 1998, on a staggered schedule over a 6-year period.

While CCA documents are not legal precedent, the Congress believed the public was entitled to know the rules being applied in its dealings with the IRS and the underlying rationale. Providing documents for public inspection was intended to increase the public's confidence that the tax system operates fairly and in an even-handed manner with respect to all taxpayers.³

The objective of this audit was to determine if management controls ensured compliance with RRA 98 Section 3509 and I.R.C. § 6110 requirements for making CCA documents available to the public.

Results

Counsel has implemented the provisions of RRA 98 Section 3509 and I.R.C. § 6110 and has routinely made CCA documents available to the public. Counsel released, as they were issued, approximately 500 CCA documents for public inspection during Fiscal Year (FY) 2000. Counsel also used a document review team to collect, process, and release historic CCA documents. While not released by the date specified in the law, almost 2,300 CCA documents from 1994 through 1998 were released to the public during FY 2000 and the first quarter of FY 2001.

Counsel is on track to timely release the remaining historical CCA documents. Based on our analysis, Counsel's procedures also were effective in ensuring that almost 95 percent of the CCA documents prepared in FY 2000 were released for public inspection. However, the processes for providing public access to CCA documents could be

¹ Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, 112 Stat. 685.

² Internal Revenue Code, 26 U.S.C. § 6110 (2000).

³ House of Representatives Conference Report to Accompany H.R. 2676, H.R. 105-599 (Page 298).

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

improved by enhancing controls to help ensure that all are identified for timely release and providing a convenient way to research and retrieve historical CCA documents.

Counsel Is On Track to Timely Release the Remaining Historical Chief Counsel Advice Documents

Counsel informed us and we confirmed that only 29 percent of the 1994 through 1998 CCA documents were released timely by January 2000. Counsel had released approximately 74 percent through April 2000, approximately 96 percent through September 2000, and the final few documents were released in January 2001.

Many factors delayed Counsel efforts to release these documents. Counsel indicated there were difficulties in the start-up process for this unique effort, staffing constraints that persisted during the year, and changes to the redaction⁴ method after the effort had begun. As anticipated, these factors did not affect the release of 1992 and 1993 CCA documents, which Counsel indicated were timely released in July 2001.

Counsel Can Enhance Its Procedures to Ensure That All Chief Counsel Advice Documents are Identified for Timely Release to the Public

Counsel released almost 95 percent (472 of an estimated 500) of the CCA documents issued in FY 2000. Counsel also released 85 percent (402 of 472) of these documents within the time periods defined by law.

We estimate that 28 CCA documents issued in FY 2000 were not released. We identified 10 CCA documents issued that were not released and estimate that there are potentially an additional 18 CCA documents that were not released. These instances were identified by reviewing closed cases that had specific codes in the case management system that indicated CCA documents may have been issued but not released.

Delays in releasing documents usually occurred when the Counsel office that authored the document did not timely forward it for disclosure processing. In 30 untimely released documents we sampled, it took an average of 91 days after documents were signed before they were received by the disclosure processing function. The law requires the IRS to notify taxpayers within 60 days that their documents will be released for public inspection or if the document does not relate to a specific taxpayer the IRS should release the document within 60 days.

Counsel attorneys who prepared the documents were responsible for initiating the release process after the documents were signed. While Counsel managers reviewed and signed

⁴ In this context, redaction refers to the process of deleting sensitive, private, or identifying details before the document is publicly disclosed.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

CCA documents, they were not required to specifically determine whether documents had been identified for release.

Although CCA documents cannot be cited as precedent, they contain Counsel's views on significant tax issues at the time the advice was written. When Counsel does not provide documents, or provide documents timely, they miss an opportunity to assist practitioners and taxpayers involved in similar tax situations.

The Public Should Be Provided a Convenient Way to Research and Retrieve Historical Chief Counsel Advice Documents

To retroactively release CCA documents issued during 1994 through 1998, Counsel placed paper copies of the documents in the IRS headquarters public reading room. These paper documents were placed in the reading room in no searchable order and without an index. By releasing the CCA documents in this manner at only one IRS location, persons living outside of the Washington, DC area had no convenient way to research and retrieve any specific documents that related to a particular revenue provision or taxation subject.

Although Counsel met the requirement to release these documents, providing a way to research and retrieve these documents would have supported the IRS' strategic goal of providing top-quality service to taxpayers. According to a Counsel management official, several factors led to the decision to not convert the documents to electronic format or create an index. Since prior years' documents were not always retained in electronic format, the costs associated with making them electronically accessible would have been high. In addition, Counsel considered the documents to be of only historic value and was concerned that the release might confuse the public's understanding of the actual current views held by Counsel.

We believe the public does have a current interest in these documents and that Counsel is not exempted from applying the indexing requirements contained in the regulations.⁵ Interest in the content of the historical CCA documents is indicated by the tax community's use of the documents. At least one tax publisher, to whom the IRS provided a complete set of copies of the paper documents, has made them electronically available to its subscribers and provides a full text search capability. Counsel informed us that taxpayers and their representatives have referenced these historical CCA documents in their dealings with the IRS. In contrast, the absence of an IRS supplied way to research and retrieve specific documents restricts access by persons who are not subscribers to a particular tax publisher.

⁵ Code of Federal Regulations, 26 C.F.R. § 301.6110-1.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

Summary of Recommendations

The Office of the Chief Counsel should revise its procedures to require Counsel managers to ensure that CCA documents have been identified for public release when they approve the document for issuance. It should also initiate a periodic review focusing on specific case closures. Additionally, Counsel should develop and implement a convenient way for the public to research and retrieve historical CCA documents.

Management's Response: The Office of the Chief Counsel agreed with the recommendations to enhance its procedures to ensure that all CCA documents are identified for timely release. Counsel made several modifications to its procedures and distributed to all Counsel managers and attorneys a document that clarifies the CCA procedures. Counsel also intends to initiate reviews, on a periodic basis, which will focus on specific case closures.

At this time, Counsel does not agree with the recommendation to develop and implement a convenient method for the public to research and retrieve historic CCA documents. Counsel will make that determination after it reviews the results of the IRS study concerning the delivery of the agency's public reading room services.

Office of Audit Comment: We believe that if the IRS study recommends not maintaining historic documents electronically, Counsel should pursue options of contracting with tax publishers to allow the public access to these documents.

Management's comments are included in the body of the report where appropriate, and the complete text of their response is included as Appendix V.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

Objective and Scope

This audit evaluated the Office of the Chief Counsel's compliance with requirements to make legal advice documents available to the public.

The objective of this audit was to determine if management controls ensured compliance with Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ Section 3509 and Internal Revenue Code (I.R.C.) § 6110² requirements for making Chief Counsel Advice (CCA) documents available to the public.

We performed this audit in the National Headquarters of the IRS' Office of the Chief Counsel. The audit included the analysis of electronic data from Counsel computer systems and the review of source documents on a sample basis to determine or confirm selected information. Cases reviewed were closed between October 1999 and November 2000.

This audit was performed from November 2000 to July 2001 in accordance with *Government Auditing Standards*.

Details of our objective, scope, and methodology are presented in Appendix I. Major contributors to this report are listed in Appendix II.

Background

The RRA 98 required Counsel to provide public access to both currently issued and historic CCA documents. CCA documents convey legal advice to IRS field employees.

The RRA 98 expanded the requirements for the IRS to make legal advice documents available to the public. The RRA 98 amended I.R.C. § 6110 by expanding public access to tax advice written by the IRS headquarters Office of the Chief Counsel to field employees. Under the amendment, the IRS is required to release CCA documents to the IRS' public reading room and to make them available electronically on the

¹ Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, 112 Stat. 685.

² Internal Revenue Code, 26 U.S.C. § 6110 (2000).

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

The Congress wanted all taxpayers to have access to Counsel's view on significant tax issues.

IRS Internet site. The IRS was also required to release historic CCA documents that were issued between 1986 and 1998 on a staggered schedule over a 6-year period. Section 3509 did not include an obligation to make the historical CCA documents available to the public electronically, as Counsel had generally retained those documents only in paper format.

While CCA documents are not legal precedent, the Congress believed the public was entitled to know the rules being applied in its dealings with the IRS and the underlying rationale. The Congress wanted all taxpayers to have access to the "considered view of the Chief Counsel's national office on significant tax issues." Providing documents for public inspection was intended to increase the public's confidence that the tax system operates fairly and in an even-handed manner with respect to all taxpayers.³

Prior to the amendment by Section 3509 that added CCA documents, I.R.C. § 6110 required the IRS to provide other kinds of Counsel determinations for public inspection. The statute required that taxpayers involved in the determinations can participate in the deleting of sensitive, private, or identifying details before documents are released for public viewing.

Results

Approximately 500 CCA documents released in FY 2000 are available to the public on the IRS Internet site.

Counsel has implemented the provisions of Section 3509 and I.R.C. § 6110 and is routinely making CCA documents available to the public. Counsel released approximately 500 current CCA documents for public inspection during Fiscal Year (FY) 2000. Counsel modified the process that was already in place for releasing other types of written determinations to require electronic processing of all current documents subject to release under I.R.C. § 6110. Counsel

³ House of Representatives Conference Report to Accompany H.R. 2676, H.R. 105-599, (Page 298).

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

Approximately 2,300 CCA documents issued from 1994 through 1998 were placed in the IRS reading room and provided to interested tax publishers.

Processes for providing public access to CCA documents were effective, but could be improved.

attorneys prepared documents in electronic format and used automated editing tools to delete information that should not be disclosed. Counsel attorneys then forwarded the electronic files for the final steps that resulted in the uploading of an image of the document to the Internet. In the 35 CCA documents we tested, Counsel attorneys had deleted information and the documents were available in electronic format on the IRS Internet site.

Counsel also used a document review team to collect, process, and release historic CCA documents to the public as required. Since those prior years' documents had generally only been retained in paper format, it was necessary for Counsel personnel to manually identify and gather those that required release. Counsel personnel had to review the historic CCA documents to identify information that should not be disclosed and the IRS had to notify taxpayers involved of the intent to disclose the document. The first release of prior years' documents consisted of approximately 300 Counsel bulletins and litigation guideline memorandums timely released in July 1999. Counsel released almost 2,300 CCA documents issued from 1994 through 1998 during FY 2000 and the first quarter of FY 2001. The IRS was not required to make historic CCA documents available in electronic format. Counsel released these CCA documents in paper format to the IRS headquarters public reading room and provided complete sets of the copies to interested tax publishers.

Based on our analysis, Counsel's procedures were effective in ensuring that almost 95 percent of the CCA documents prepared in FY 2000 were released for public inspection. While all of the 1994 through 1998 historic CCA documents were not released by the date specified in Section 3509, Counsel is on track to timely release the remaining historical CCA documents. However, the processes for providing public access to CCA documents could be improved by:

- Enhancing controls to help ensure that all CCA documents are identified for timely public release.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

- Providing a convenient way for the public to research and retrieve historical CCA documents.

Counsel Is On Track to Timely Release the Remaining Historical Chief Counsel Advice Documents

Section 3509 required that historical CCA documents generated after 1985 be made available for public inspection on a staggered schedule over a 6-year period. Since those prior years' documents had generally only been retained in paper format, it was necessary for Counsel personnel to manually identify and gather those that required release. Just as with current documents, Counsel personnel had to review the historic CCA documents to identify information that should not be disclosed and any taxpayers involved had to be notified of the IRS' intent to disclose the document.

The IRS was required to release CCA documents issued to the field for the years 1994 through 1998 by January 2000 and for the years 1992 through 1993 by July 2001. The IRS has an additional due date in July 2004 to release CCA documents issued for the years 1986 through 1991.

Only a portion of the historical CCA documents from 1994 through 1998 were timely released.

Counsel informed us, and our analysis of the document review team database and of selected source documents verified, that only 29 percent of the 1994 through 1998 CCA documents were released by January 2000. Counsel had released approximately 74 percent through April 2000, approximately 96 percent through September 2000, and the final few documents were released in January 2001.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

The factors that delayed the release of the 1994 through 1998 historical CCA documents did not affect the release of the 1992 through 1993 documents.

Many factors delayed Counsel efforts to release these documents. Counsel indicated there were difficulties in the start-up process for this unique effort, staffing constraints that persisted during the year, and changes to the redaction⁴ method after the effort had already begun. As anticipated, these factors did not affect the release of 1992 and 1993 CCA documents, which Counsel indicated were timely released in July 2001.

Counsel appropriately withheld public release on some documents when necessary.

The document review team did not release some 1994 through 1998 CCA documents because of an inability to mail the taxpayer the notice of intent to disclose or because the document did not meet the CCA document definition. Generally, the document review team's process appropriately determined when not to release documents in 70 cases we sampled in our review. Counsel took corrective action on isolated situations we observed in this sample and agreed to release six documents. Based on our results, Counsel validated all the remaining 1994 through 1998 documents they previously closed without release. The result was that Counsel identified 52 additional documents that could be released, primarily due to obtaining updated address information for the taxpayers involved.

Counsel Can Enhance Its Procedures to Ensure That All Chief Counsel Advice Documents are Identified for Timely Release to the Public

Counsel released almost 95 percent of the CCA documents issued in FY 2000 and released 85 percent of these timely.

Counsel released for public inspection almost 95 percent (472 of an estimated 500) of the CCA documents issued in FY 2000. Counsel also released 85 percent (407 of 472) of these CCA documents within the time periods defined by law. However, Counsel could enhance its

⁴ In this context, redaction refers to the process of deleting sensitive, private, or identifying details before the document is publicly disclosed.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

Additional documents that should have been released were identified by reviewing cases with specific codes.

procedures to help ensure that all CCA documents are identified and timely released.

We estimate that 28 CCA documents issued in FY 2000 were not released. We identified 78 FY 2000 closed cases on the case management system that had codes indicating a CCA document may have been issued without the document being released. We then reviewed 28 of these 78 closed cases and identified 10 CCA documents that were not released. Counsel subsequently initiated actions to release these 10 CCA documents. Applying this pattern to the remaining 50 cases, there potentially would be an additional 18 CCA documents not released.

Delays in releasing documents usually occurred when the Counsel office that authored the document did not timely forward it for disclosure processing. In 30 untimely released documents we sampled, it took an average of 91 days after documents were signed before clerks in the disclosure processing function received them. These delays prevented the release of documents within the time periods defined by law.

I.R.C. § 6110 requires that, within 60 days of a document's issuance, the IRS must notify taxpayers that their CCA documents will be publicly disclosed. CCA documents are then released for public inspection within 90 days of providing taxpayers the notice, for a combined maximum total of 150 days. When CCA documents do not relate to a specific taxpayer there is no need to mail a notice and the document can be released within 60 days.

Counsel managers were not required to determine whether documents had been identified for release during their review and approval of CCA documents.

Counsel attorneys who prepared the documents were responsible for initiating the release process after the document was issued (signed). While Counsel managers reviewed and signed CCA documents, they were not required to specifically determine whether documents had been identified for release.

Although CCA documents cannot be cited as precedent, they contain Counsel's views on significant tax issues at the time the advice was written. When Counsel does not

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

provide documents, or provide documents timely, an opportunity is missed to assist practitioners and taxpayers involved in similar tax situations.

Recommendations

The Office of the Chief Counsel should:

1. Revise procedures to require Counsel managers to ensure during their review process that CCA documents have been appropriately identified for disclosure.
2. Assess the effectiveness of the attorney and reviewer disclosure process by initiating a periodic review of case management system closing and publication data to identify any cases that indicate CCA documents may have been issued without being released to the public.

Management's Response: The Office of the Chief Counsel agreed with the recommendations to enhance its procedures to ensure that all CCA documents are identified for timely release. Counsel made several modifications to its procedures and distributed to all Counsel managers and attorneys a document that clarifies the CCA procedures. Counsel also intends to initiate reviews, on a periodic basis, which will focus on specific case closures.

The Public Should Be Provided a Convenient Way to Research and Retrieve Historical Chief Counsel Advice Documents

Counsel did not prepare an index for the 1994 through 1998 CCA documents placed in the headquarters public reading room and provided to interested tax publishers.

To retroactively release CCA documents issued during 1994 through 1998, Counsel placed paper copies of its documents in the IRS headquarters public reading room. These paper documents were placed in the reading room in no searchable order and without an index. By releasing the CCA documents in this manner at only one IRS location, persons living outside of the Washington, DC area had no convenient way to research and retrieve

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

any specific documents that related to a particular revenue provision or taxation subject.

The IRS also provided complete sets of the paper copies to tax publication companies that requested copies of the historic CCA documents. At least one tax publisher that received a copy of the documents has made them electronically available to its subscribers and provides a full text search capability.

Providing a way to research and retrieve specific documents would be more customer service oriented.

Although Counsel met the requirement to release these documents, providing a way to research and retrieve specific documents would have supported the IRS' strategic goal of providing top-quality service to each taxpayer. According to a Counsel management official, several factors led to the decision to not convert the documents to electronic format or create an index. Since prior years' documents were not always in electronic format, the costs associated with making them electronically accessible would have been high. In addition, Counsel considered the documents to be of only historic value and was concerned that the release might confuse the public's understanding of the actual current views held by Counsel.

We believe the public has a current interest in the historic CCA documents.

We believe the public has a current interest in these documents and that Counsel is not exempted from applying the indexing requirements contained in the regulations. Regulations that implement I.R.C. § 6110 required an index to documents that are open to public inspection.⁵

Interest in the content of the historical CCA documents is indicated by the tax community's use of the documents. A Counsel management official informed us that taxpayers and their representatives have referenced these historical CCA documents in their dealings with the IRS. In contrast, the absence of an IRS supplied way to research and retrieve specific documents restricts access by the general public who are not subscribers to a particular tax publisher.

⁵ Code of Federal Regulations, 26 C.F.R. § 301.6110-1.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

Recommendation

The Office of the Chief Counsel should:

3. Develop and implement a convenient method for the public to research and retrieve historical CCA documents.

Management's Response: The Office of the Chief Counsel did not agree with this recommendation at this time. However, a determination on whether to provide the historic CCA documents in a more readily retrievable format will not be made until Counsel can review the results of the IRS study concerning the delivery of the agency's public reading room services.

Counsel stated that the cost associated with making the historic documents electronically accessible would be high and that placing paper documents in the reading room fully satisfied the statutory requirement to make these documents publicly available. Counsel stated that while there may be some benefit associated with the IRS making these documents available electronically, such benefits would be marginal, given that several tax publishers have already made these documents available electronically.

Counsel also stated that the IRS is examining the delivery of the reading room services, specifically its use of automation technology. Counsel will make historic documents available if the IRS determines that these documents can be provided in a readily retrievable format that would avoid time consuming indexing, copying, and scanning processes.

Office of Audit Comment: We believe that if the IRS study recommends not maintaining historic documents electronically, Counsel should pursue options of contracting with tax publishers to allow the public access to these documents.

**The Office of the Chief Counsel Has Made Significant Progress in Making Its
Advice Documents Available to the Public**

Conclusion

Counsel has implemented the provisions of Section 3509 and I.R.C. § 6110 and has routinely made CCA documents available to the public. While all of the 1994 through 1998 historic CCA documents were not released by the date specified, Counsel is on track to timely release the remaining historical CCA documents. In addition, Counsel could improve the processes for providing public access and greatly enhance customer service by ensuring that all documents are identified for timely release and by providing a convenient way for the public to research the historical documents.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

Appendix I

Detailed Objective, Scope, and Methodology

The objective of this audit was to determine if management controls ensured compliance with the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998¹ Section 3509 and Internal Revenue Code § 6110² requirements for making Chief Counsel Advice (CCA) documents available to the public. We performed this audit in the National Headquarters of the IRS' Office of the Chief Counsel. Specifically, we:

- I. Identified what controls existed for releasing current and historic CCA documents by reviewing operating procedures and interviewing Counsel personnel.
- II. Determined if data in the Counsel Automated Systems Environment (CASE) case management system indicated that CCA documents had been timely released.
 - A. Extracted 472 workload item records closed during Fiscal Year (FY) 2000 that had publication codes present and determined which category codes were the most common for CCA documents.
 - B. Extracted 789 workload item records closed during FY 2000 that had category codes among the most common for CCA documents that were published, but which had no publication codes present.
 - C. Judgmentally assigned a taxpayer specific or non-taxpayer specific designation to each published item, calculated the elapsed calendar days between workload item completion dates and release dates, and compared the elapsed days to a standard of 60 days for non-taxpayer specific items and 150 days for taxpayer specific items.
 - D. Sampled 35 of 70 FY 2000 CCA documents not timely released to determine the reasons why. Of the 35 cases reviewed, 30 were randomly selected. The other five cases were judgmentally selected because the elapsed days were more than twice the standard. A statistically valid sample was not warranted due to the relatively few cases that exceeded the standards.
 - E. Reviewed the Internet copy of the remaining 35 FY 2000 CCA documents not timely released to verify the issuance and release dates.

¹ Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. No. 105-206, 112 Stat. 685.

² Internal Revenue Code, 26 U.S.C. § 6110 (2000).

**The Office of the Chief Counsel Has Made Significant Progress in Making Its
Advice Documents Available to the Public**

- F. Sampled 28 of 78 FY 2000 workload items with no publication codes that had category codes and closing codes indicating a CCA document may have been issued to determine if a document should have been released, and if so, why it was not. Of the 28 cases reviewed, 27 were randomly selected based on workload codes, closing codes and case names. One non-random selection was made based on the case name. A statistically valid sample was not warranted due to the relatively time consuming process of gathering and reviewing these files.
- III. Determined if data in the Counsel document review team database indicated that historical CCA documents had been timely released.
 - A. Obtained the database with 2,778 records for 1994 through 1998 documents processed by the document review team. The effective date of Section 3509 and ending date for historic CCA documents was October 20, 1998.
 - B. Compared the public release dates to the due date for release and calculated what portion of 2,298 documents were timely released.
 - C. Sampled 70 of 480 database records from 1994 through 1998 that were closed without public release because the taxpayer could not be contacted (35 cases) or because they considered the document not to be a CCA document (35 cases) to determine if the closing appeared warranted. The cases reviewed were randomly selected. A statistically valid sample selection was not warranted because the sample results did not indicate that a significant condition existed.
- IV. Determined if current and historical CCA documents that were released were accessible to the public.
 - A. Sampled 35 FY 2000 cases with publication numbers present in the CASE system and 35 cases designated as released in the document review team database and verified they were open to the public. The cases reviewed were randomly selected. A statistically valid sample selection was not warranted because the sample results did not indicate that a significant condition existed.
 - B. Visited the IRS headquarters public reading room (for both historic and current cases) and researched the IRS Internet site (for current cases) to determine if the documents could be located.

**The Office of the Chief Counsel Has Made Significant Progress in Making Its
Advice Documents Available to the Public**

Appendix II

Major Contributors to This Report

Maurice S. Moody, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)

Mary V. Baker, Director

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James D. Dorrell, Senior Auditor

**The Office of the Chief Counsel Has Made Significant Progress in Making Its
Advice Documents Available to the Public**

Appendix III

Report Distribution List

Commissioner N:C
Deputy Commissioner N:DC
Associate Chief Counsel (Procedure and Administration) CC:P&A
Chief Communications and Liaison CL
National Taxpayer Advocate TA
Director, Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O
Office of Management Controls N:CFO:F:M
Audit Liaison: Chief Counsel CC

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to the Congress.

Type and Value of Outcome Measure:

- Taxpayer burden – Potential; 68 additional Chief Counsel Advice documents released for public inspection; (see pages 5 and 6).

Methodology Used to Measure the Reported Benefit:

The use of judgmental samples in this audit, rather than statistically valid samples, limits the reportable outcome measure to the actual number of additional documents identified for release during our testing.

We reviewed 70 out of 480 cases where Counsel did not release historical Chief Counsel Advice (CCA) documents because of an inability to mail a notice of intent to disclose to the taxpayer involved or because the document was considered not to have met the CCA document definition. Closing these cases without release generally seemed to have been appropriate, but Counsel agreed to release six documents. Because of our audit, Counsel decided to validate all the remaining historical CCA documents they previously closed without release. The result was that Counsel identified 52 additional CCA documents on which they could initiate the release process, primarily due to obtaining updated address information for the taxpayers involved. (Page 5)

We reviewed 28 of 78 Fiscal Year 2000 Counsel workload items that had certain codes in the case management system indicating a CCA document may have been issued but not released for public viewing. We identified 10 CCA documents that should have been released but had not been. Counsel subsequently initiated the process to release those documents. (Page 6)

**The Office of the Chief Counsel Has Made Significant Progress in Making Its
Advice Documents Available to the Public**

Appendix V

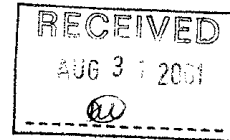
Management's Response to the Draft Report



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

AUG 30 2001



SPR-120838-00
RSGoldstein

**MEMORANDUM FOR TREASURY INSPECTOR GENERAL FOR
TAX ADMINISTRATION**

FROM: Richard Skillman *R. W. Skillman*
Acting Chief Counsel

SUBJECT: Draft Audit Report #200010042: The Office of Chief
Counsel Has Made Significant Progress in Making Its Advice
Documents Available to the Public

Thank you for the opportunity to respond to your draft audit report entitled "The Office of Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public" dated August 6, 2001. The report reflects the results of your review of the Office of Chief Counsel's efforts to implement the mandate of section 3509 of the Internal Revenue Service Restructuring and Reform Act of 1998 to make Chief Counsel Advice (CCA) documents available for public inspection.

This audit involved a review of our practices for releasing current and historic CCA documents. The audit utilized data in the Counsel Automated Systems Environment (CASE) management system and Counsel's closed case files to evaluate whether CCA documents had been appropriately and timely processed for public inspection.

The audit report concluded that the Office of Chief Counsel's procedures were effective in ensuring that almost 95 percent of the CCA documents prepared in Fiscal Year 2000 were released for public inspection. The audit report does recognize, however, that greater compliance can be achieved and it makes specific recommendations for improvement.

We are gratified that the report recognized the significant efforts and substantial progress our office has made to comply with the mandate of section 3509 since the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998. We also generally agree with the audit conclusions that room for improvement exists and we have taken, and are continuing to take, steps to ensure greater compliance, many of which are consistent with the report's recommendations.

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

SPR-120838-00

2

IDENTITY OF RECOMMENDATION: The audit report makes three specific recommendations for improvement. It recommends:

1. Revising existing procedures to require that Counsel managers ensure that CCA documents have been appropriately identified for disclosure;
2. Establishing a periodic review of case management system closing and publication data to identify CCA documents that may have been issued but not released to the public; and
3. Developing and implementing a convenient method for public access and research of historical documents (which were released in paper form only).

ASSESSMENT OF CAUSE(S): With regard to the first recommendation, the audit identified 78 FY 2000 closed cases that had codes indicating a CCA document may have been issued without the document being made available for public inspection. A review of 28 of those cases identified 10 CCA documents that were not released, but which may have been released if greater oversight had been exercised by Counsel managers. Counsel managers reviewed and signed these documents, but they were not required to specifically determine whether the documents had been identified for release. Rather, Counsel's attorneys were responsible for initiating the release process after the documents were signed.

The second recommendation also relates to Counsel's oversight and suggests that Counsel did not have in place a procedure for periodic reviews of the case management system to identify CCA that may have been issued but not released to the public.

With regard to the third recommendation, the report acknowledged that Counsel met its statutory obligation to release historic CCA documents to the public by placing paper copies in the Freedom of Information (FOI) Reading Room in Washington, D.C. The report suggested, however, that we missed an opportunity to better support the IRS's strategic goal of providing top-quality service to taxpayers by not making the documents available to the public in an electronic format.

CORRECTIVE ACTION/MONITORING PLAN: With regard to the first recommendation, we agreed during the audit that improvements could be made to existing procedures not only to ensure that managers are more involved in the process but also to ensure that all CCA documents are properly identified and timely released. To this end, we have already instituted several modifications to our procedures. We prepared a document that clarifies for our managers and attorneys the public inspection procedures for CCA. This document was distributed to all Chief Counsel managers and attorneys in July 2001 and it has been posted on our Counsel Intranet site. We also

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

SPR-120838-00

3

have revised the check sheets that our attorneys and managers use when assigning work and processing CCA. The new check sheets will allow us to better control the time frames in which CCA are coordinated with field counsel offices and processed. The revised check sheets will also require that both attorneys and managers "sign-off" to ensure that both electronic and hard copy versions of the documents have been properly and timely transmitted to the Disclosure Unit for processing to the public. This should also increase the level of management involvement in the process as you recommend.

We also agree with the second recommendation and have instituted a procedure to follow up with offices that fail to comply with the check sheet procedures. On a periodic basis, the Disclosure Unit sends memoranda to the Associate Chief Counsel offices, as appropriate, when it has not received both the electronic and hard copy versions of the CCA documents needed for processing. The Associates are then responsible for researching their documents to ensure all versions are sent forward for processing. We are optimistic that these modifications to our current procedures will further improve our delivery of CCA documents to the public. Our modifications are also consistent with your recommendation to conduct periodic reviews. We intend to initiate reviews, on a periodic basis, which will focus on specific case closures to ensure that CCA documents are properly identified and timely made available for public inspection.

Finally, the report recommends that we develop and implement a more convenient method for the public to research and retrieve historic CCA documents. We do not agree with this recommendation. As your report notes, placing historic CCA documents in the FOI Reading Room fully satisfied the statutory requirement that we make these documents publicly available. As Congress recognized, since these documents were not originally available in electronic format, the costs associated with making them electronically accessible would be high. Additionally, the job of preparing these documents in electronic format would likely fall on the same people who are responsible for timely processing current and remaining documents. It is also important to note that we provided these historic CCA documents to several tax publishers who, in turn, have made them widely available in electronic format to many of the IRS's customers. Thus, while there may be some benefit associated with making these documents available through our own systems, such benefits would be marginal at this point given what the tax publishers have done so far.

Nevertheless, your recommendation comes at a time when the IRS is in the process of modernizing the entire Freedom of Information (FOI) Reading Room. In this regard, the IRS's Chief, Communications & Liaison, is presently examining the agency's delivery of FOI Reading Room services generally and its use of automation technology specifically. Even prior to the audit, we had been exploring the possibility of placing these documents on the IRS Website as part of the IRS's larger efforts. If we determine that we can provide these documents in a readily retrievable format that would avoid time

The Office of the Chief Counsel Has Made Significant Progress in Making Its Advice Documents Available to the Public

SPR-120838-00

4

consuming indexing, copying and scanning processes, we will make them available as you suggest.

IMPLEMENTATION DATE: We implemented many of the corrective actions relating to the first and second recommendations on July 5, 2001, when we distributed the document that clarifies for our managers and attorneys the public inspection procedures for CCA and the new CCA check sheets to all Counsel managers and attorneys. The Disclosure Unit is periodically sending memoranda to the Associate Chief Counsel offices when it has not received both the electronic and hard copy versions of the CCA documents required for processing. We plan to conduct at least one review of the cases in the case management system during the next fiscal year to identify potential CCA that may have been issued but not released.

Regarding the third recommendation, a determination on whether to provide the historic CCA in a more readily retrievable format will not be made until we can review any proposal the IRS makes concerning the delivery of the agency's FOI Reading Room services.

RESPONSIBLE OFFICIAL(S): This response was prepared by Deborah A. Butler, Associate Chief Counsel (Procedure and Administration) and members of her office. Questions regarding this response may be directed to Dominic A. Paris, Deputy Associate Chief Counsel (Procedure and Administration) at 202-622-3400 or Margo Stevens, Acting Assistant Chief Counsel (Disclosure and Privacy Law) at 202-622-4560.

cc: Pamela J. Gardiner
Deputy Inspector General for Audit

Associate Chief Counsel (Finance and Management)
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